REMARKS

Claims 1, 15, 19, 33, 37 and 51 stand rejected under 35 USC §102(b) as anticipated by Chi (U.S. Patent 6,006,329). Applicant respectfully disagrees with such rejection.

Specifically, in response to applicant's latest arguments and amendments, the Examiner has continued to rely on Fig. 3b and 4 and the following excerpt from Chi to meet applicant's claimed "audit data generator triggered by said computer virus scanner logic, and responsive to said data identifying said computer file to be scanned, for identifying a request to execute a computer program and, in response to identification of said request to execute said computer program, for generating audit data identifying said computer program" (see this or similar, but not necessarily identical language in each of the independent claims).

> "When the processor 110 receives a request to scan files for viruses, it sends a request to the storage medium 130 to retrieve the data streams associated with the files that are to be scanned. The retrieved data streams are then written into the system memory 140. The processor 110 then scans the requested data stream in the system memory 140 for viruses.
>
> Since viruses can span multiple data streams, a single data stream may include only one component of a particular virus. Consequently, the virus detection method of the present invention creates virus signatures that represent a component or a combination of components of a virus, where each component represents a different characteristic of a virus. The data streams are then scanned for the components of virus as opposed to the whole virus. In the case of a macro virus, a virus signature for the macro virus could be divided up into components, where each component of the signature represents a different macro of the virus." (see col. 3, lines 17-35)

In addition, the Examiner argues that "the virus detection / evaluation method (Figure 4) is interested as the audit data generator logic and providing the output of the evaluation is interpreted as generating a scan result for audit data generator (Figure 4) to meet the claim language." Applicant respectfully disagrees. However, Chi specifically teaches that the scan results are simply passed to an evaluator which, in turn, evaluates a Boolean expression. See excerpt below.

"Using the scan results, the processor (110) evaluates the Boolean expression, and, if the Boolean expression is satisfied, the processor (110) determines that the virus exists. If the Boolean expression is not satisfied, the processor (110) determines that the virus does not exist." (see col. 2, lines 45-50)

Since Chi simply passes the scan results to the evaluator, Chi does not even suggest an "audit data generator triggered ... for identifying a request to execute a computer program and, in response to identification of said request to execute said computer program, for generating audit data identifying said computer program" (emphasis added), as claimed. Only applicant teaches and claims generating audit data upon such a specific condition, namely in response to identification of a request to execute the computer program.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.*868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criteria has simply not been met by the Chi reference, especially in view of the amendments made hereinabove. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has included the subject matter of Claims 6 and 9 et al. in each of the independent claims.

With respect to the subject matter of former Claim 9 et al. (now incorporated into each of the independent claims), the subject matter of such claim stands rejected under 35 USC §103 as unpatentable over Chi in view of Christiano (U.S. Patent 5,671,412). Specifically, the Examiner relies on the following excerpt from Christiano to meet applicant's claimed "concurrent usage logic for performing a concurrent usage check for

identifying a request to execute a further computer program that would result in said further computer program concurrently executing upon more than a predetermined number of computers upon a computer network; wherein said predetermined number varies with time" (emphasis added).

> "In a "metered" license policy, a predetermined number of activations of a program or a predetermined amount of time during which the software can be used on a computer are allowed. When a client computer system 12 requests a license in such a policy, the license server can refer to a record of how many times that program has been activated, or how much run time of the program has been used, and can grant the license if appropriate. The license server can also keep track of the elapsed time while the computer system is implementing the program to determine if the allowed time runs out." (see col. 7, lines 20-30)

However, such excerpt simply discloses 1) identifying a number of times that a program has been activated, **OR** 2) identifying how much run time of the program has been used. This clearly falls short of applicant's claimed concurrent usage check for identifying a request that would result in a computer program concurrently executing upon more than a predetermined number of computers, where the predetermined number varies with time. Thus, applicant claimed invention does not relate to item 2) above, and further departs from item 1) by requiring that the predetermined number varies with time, as claimed. In this way, processing resources may be balanced and certain resource-intensive operations may be restricted during critical times.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of such limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P456/01.163.01).

Respectfully submitted,
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